

## **Pharmacy Reimbursement Task Force**

Wednesday, November 13<sup>th</sup>, 2019  
10:00am - 12:00pm  
Legislative Hall, House Majority Hearing Room

### **Meeting Attendees:**

#### **Task Force Members**

##### **Present**

Rep. Andria Bennett  
Rep. Michael Smith  
Sen. Anthony Delcollo  
Faith Rentz  
Victoria Brennan  
Judi Schock  
Hooshang Shanehsaz  
Kim Robbins  
Vincent Madaline  
Kevin Musto  
Pam Price  
Kim Robinson  
Leslie Ledogar  
Terri Corbo

##### **Title/Organization**

Chair, House of Representatives  
Speaker Appointment, State Representative  
Pro-Temp Appointment, State Senator  
Statewide Benefits Office  
Designee, Controller General Morton  
Designee, OMB Director Jackson  
Board of Pharmacy  
Delaware Pharmacists Society  
Speaker Appointment, Chain Pharmacy Rep  
Speaker Appointment, Indep. Pharmacy Rep  
Pro-Temp Appointment, MCO (Highmark)  
Pro-Temp Appointment, PBM Rep  
Designee, Insurance Commissioner Navarro  
Pro-Temp Appointment, Hospital Pharmacy

##### **Absent:**

Sen. David Sokola  
Stephen Groff  
Christine Schiltz

Co-Chair, State Senate  
Designee, DHSS Secretary Walker  
Speaker Appointment, Health Insurer Rep

##### **Attendees:**

Rep. Ray Seigfried  
Chris DiPietro  
Deb Hamilton  
Christina Bryan  
Bryan Gordon  
Ted Spickler

State Representative  
EPIC Pharmacies  
Hamilton-Goodman Partners, LLC  
Delaware Healthcare Association  
Christiana Care Health System  
AARP

##### **Staff:**

Lauren Barkachy

House of Representatives

Chair Bennett called the meeting to order at 10:17 am.

After introductions, Chair Bennett asked the group if they have any comments on the minutes from the second meeting.

Kim Robbins, President of the Delaware Pharmacists Society, made a motion to approve last meeting's minutes. Hooshang Shanehsaz, Chair of the Board of Pharmacy, seconded the motion and all task force members supported the motion. Chair Bennett declared the previous meeting's minutes approved.

Ms. Robbins said she would like address Sen. Sokola's question from the last meeting regarding a recently introduced federal law to regulate PBMs at the national level. She stated this law is the Prescription Drug Pricing Act of 2019, which decreases prescription drug prices for Medicaid and Medicare programs and lowers out-of-pocket costs for patients.

Chair Bennett reminded the task force that they had started to discuss legislation from Colorado, Arkansas, and Iowa regarding insulin prices and regulating PBMs.

Mr. Shanehsaz provided an overview of last meeting's discussion on the three bills: Colorado's House Bill 19-1216 caps the out-of-pocket price for insulin and Iowa's Senate File 563 states that each PBM must provide a report to the Insurance Commissioner in an effort to regulate PBMs. He stated that Arkansas' SB 520 was the most comprehensive bill since it lays out how the PBM auditing process works, allows pharmacies the right to refuse to fill a prescription if they are being paid less than they should be from their PBMs, and stops PBMs from charging pharmacies for other fees.

Chair Bennett stated that the Delaware Department of Insurance (DOI) is putting together the required regulations outlined in HB 194. Leslie Ledogar, Designee for Insurance Commissioner Navarro, is hoping to share completed regulations with the task force before they are released to the public.

Chair Bennett asked the group what they think about waiting until the next meeting to see and discuss DOI's PBM regulations.

Mr. Shanehsaz said he thinks it makes sense to wait until the next meeting to see what DOI comes up with for regulating PBMs as part of Chair Bennett's HB 194.

Senator Anthony Delcollo said it is logical to wait for DOI's PBM regulations. He asked when the regulations are expected to be ready.

Chair Bennett stated that Ms. Ledogar plans to have the regulations ready for the task force members' review by mid-December.

Ms. Ledogar asked Mr. Shanehsaz if the Arkansas bill included a network advocacy.

Mr. Shanehsaz responded that lines 27-31 of the Arkansas legislation states that PBMs cannot impose pharmacy accreditation requirements that are inconsistent with the State Board of Pharmacy's requirements. He explained PBMs were created to save plan sponsors money, but

now charge pharmacies millions of dollars in fees. He provided the example that pharmacies are charged every single time a claim is run through their PBMs. He said the Arkansas bill clarifies that these fees need to be approved by the state Insurance Commissioner in coordination with the Arkansas State Board of Pharmacy first.

Ms. Robbins said she has had claims rejected by a PBM only to find out that certain medications are not covered by the PBM. She explained that it was only after multiple claims were sent in and charged for by the PBM that she was informed the medication was not covered.

Kevin Musto, a pharmacist and owner of Atlantic Apothecary, said his pharmacy incurs countless fees to submit claims to see what the prices of brand name drugs versus generic drugs are for their patients.

Kim Robinson, a PBM representative for Cigna, stated that protection for pharmacies from extra fees for changed claims is included in Chair Bennett's HB 194. Line 82 of the bill states that PBMs will not require a pharmacy to reverse and rebill claims and will provide reimbursement for the claims that need to be changed.

Mr. Shanehsaz said this protection is not included in the Arkansas bill. He said the Arkansas bill talks about licensing PBMs, not just registering them. He emphasized that PBMs should be licensed in Delaware.

Ms. Ledogar explained that registration is when an entity lets a regulatory body know it is operating while licensure is obtaining permission to operate and has stricter rules for the entity to follow. She said Delaware's statute requires registration, not licensure.

Ms. Ledogar said that registration can be an efficient process because in order for a PBM to be registered in the state, the PBM has to submit information about their practices to DOI.

Ms. Robinson added that there are some states whose registration process is stricter than other states' licensing process for PBMs.

Terri Corbo, a pharmacist at Christiana Care Hospital, asked for clarity on the scope of involved populations that will fall under HB 194. She asked if all PBMs in Delaware will be affected by the bill.

Ms. Ledogar responded that HB 194 requires, among other things, registering PBMs in Delaware. The jurisdictional issue arises because of State law intersecting with the federal law ERISA, which governs employee benefits plan. She explained that HB 194 is running up against ERISA, and that the Arkansas bill had to be amended in response to legal challenges based in the ERISA preemption.

Ms. Corbo asked how ERISA fits into health care at the state level.

Ms. Robinson explained that ERISA preempts all state laws that challenge ERISA employee benefit plans and employers who are putting out their own cash to make prescription claims. She explained that what is most challenging about ERISA provisions that deal with reimbursement

and fees is that they were found by the courts to be preempted and therefore the state cannot dictate those provisions.

Ms. Robbins asked what ERISA means to the Delaware State Board of Pharmacy if all states do not have any jurisdiction over these provisions in regards to billing.

Ms. Robinson stated that ERISA health plans are regulated at the federal level and so no state has any jurisdiction over these plans.

Ms. Corbo mentioned that self-insured employers all craft their health insurance plans differently.

Ms. Robinson responded that self-insured employers can make choices that are not affected by the State.

Chair Bennett stated that the next item on today's agenda is Delaware's PBM audit law. She said the pharmacists in the room have expressed issues with the current PBM audit process and therefore she would like to discuss how they think the audit process can be improved.

Mr. Shanehsaz stated that one way to improve the current audit process would be requiring that a paid claim cannot be denied by a PBM unless the PBM can prove it was a fraudulent claim done by a pharmacist.

Ms. Robbins felt that every plan should have a professional service fee for when a problem with a claim is proven. She continued to say that if a problem is proved, the PBM would collect the professional service fee and not the cost of the medication from the pharmacy.

Ms. Corbo emphasized that it is important to clarify what fraudulent practice is in this context.

Mr. Shanehsaz emphasized that having oversight is important so that PBMs cannot deny a claim simply because they feel a doctor's signature was not legible enough.

Senator Delcollo proposed the General Assembly's Division of Research look into all the legal challenges other states have faced in trying to regulate PBMs so that the task force can avoid any measures that are federally preempted.

Ms. Ledogar agreed, and added that the National Association of Insurance Commissioners has published an ERISA handbook which is available online for download that discusses all the federal preemptions.

Senator Delcollo said that consumer protection laws vary from state to state, and recommended that the state reevaluate the PBM audit process to create guidelines making a more predictable and logical process.

Mr. Shanehsaz stated that post-sale audit and reduction of payments were previously discussed. He asked if this money goes back to the plan sponsors.

Ms. Robinson responded yes, the money goes back to the plan sponsors.

Mr. Shanehsaz said he knows of PBMs that keep the money from administrative costs that are charged against their audits. He asked if the plan sponsors are actually getting the money.

Ms. Robinson responded that plans have a trail and there are federal limitations on who does the reporting. She said Delaware does have some limitations, since fraud requires intent. She explained that there needs to be a mechanism in place to ensure that pharmacists are ensuring waste is not part of the system and that audits are a method to catch these kinds of malpractices.

Ms. Corbo said PBMs are charged with keeping drug costs down. She said if state boards of pharmacy do the audits instead of the PBM auditor, then all state boards of pharmacy have to be equipped to do so and not all of them are.

Mr. Shanehsaz said he understands why PBM audits are necessary, but the PBM should not have all the power over the audit process.

Senator Delcollo stated there needs to be mechanisms in place to discern which claims should be denied and which should not be.

Ms. Ledogar said there is an internal review process within insurance carriers to regulate disputes between carriers and providers, and between carriers and individuals, which can then be appealed to the DOI.

Senator Delcollo said Delaware has the existing expertise to address these issues, so it makes sense to offer a method of due process to address the uncertainties surrounding the state's PBM audit process.

Ms. Ledogar asked the group if they are suggesting the legislators add provisions from Arkansas' bill about its PBM audit process to Title 18, chapter 33A of the Delaware Code, which is Delaware's PBM audit law.

Mr. Shanehsaz responded he would like to see aspects of Arkansas' PBM audit law added to the Delaware Code. He emphasized that in addition to improving Delaware's PBM audit law, he and other pharmacists also want fraudulent practitioners out of the system.

Ms. Ledogar asked the pharmacists in the group to confirm that the eight criteria listed under [18 Del. C. §3305A](#) are not working well enough for them.

Mr. Musto confirmed Ms. Ledogar's comment, stating that PBMs come in to the audit process with an amount of money they want to collect, and they always find a way to collect that amount. He said a pharmacist's job is to take care of their patients, but pharmacists are not fairly reimbursed for filling brand name drugs for their patients.

Chair Bennett asked if Delaware's PBM audit law can be improved without having to amend HB 194. She said HB 194 does not include changing the current audit law and therefore may need to be done separately through legislation.

Senator Delcollo stated that if a state entity is trying to satisfy legislative intent, then the General Assembly needs to authorize any new audit provisions so that due process can be administered.

Ms. Robinson said that one of the hardest parts about audit laws is that plans adhere to what is outlined in state statutes.

Mr. Shanehsaz said 33 percent of the population in Delaware is a great place to start. He said he is not aware of any federal law that says doctors' signatures can be audited by PBMs and asked where this PBM practice came from.

Ms. Robinson responded that she has not read all of the federal PBM audit laws, so she is not sure of the answer.

Ms. Corbo said it is important to include what is not recoupable monetarily in the Delaware Code.

Ms. Robinson said the issue surrounding doctors' signatures being legible or not is an important issue to be addressed in any new laws.

Mr. Shanehsaz emphasized that making the PBM audit process as simple as possible makes the most sense. He continued to say that it is important to focus on the needs of patients when re-working the PBM audit law. He said a patient may need more of a medication and providing the patient with more based on a prescription is not fraudulent behavior.

Chair Bennett discussed the timeline for moving forward. She said the next meeting will be in December and the group will discuss DOI's regulations. She said in January they will have to ask the General Assembly for an extension on the report's due date, and then in mid-March plan to have the report done. She asked the group to send via email their recommendations that they want to be included in report by December 4<sup>th</sup> so that the group can vote on them at the next meeting.

Senator Delcollo agreed with this timeline and looks forward to hearing DOI's recommendations.

Representative Smith also agreed with the timeline and hopes it will help what they are trying to accomplish move forward in both chambers.

Ms. Robbins said at the next meeting she will discuss a bill from Georgia's legislature on PBMs.

Chair Bennett opened the floor for public comment.

Seeing no public comment, it was decided the next meeting would take place on **Wednesday, December 18<sup>th</sup> from 10:00am- 12:00pm.**

Chair Bennett adjourned the meeting at 11:55 am.